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Becca Conklin
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P.O. Box 47600
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Via e-mail: swqs@ecy.wa.gov

April 22, 2016

**RE: WAC 173 201A draft language public comment**

Dear Ms. Conklin,

Thank you for the opportunity to comment on the updated proposed language for WAC 173 201A regarding surface water quality criteria.

RE Sources for Sustainable Communities is a local organization in northwest Washington, founded in 1982. RE Sources works to build sustainable communities and protect the health of northwest Washington's people and ecosystems through the application of science, education, advocacy, and action. Our North Sound Baykeeper program is dedicated to protecting and enhancing the marine and nearshore habitats of northern Puget Sound and the Georgia Strait. Our chief focus is on preventing pollution from entering the North Sound and Strait, while helping our local citizenry better understand the complex connections between prosperity, society, environmental health, and individual wellbeing. Our North Sound Baykeeper is the 43rd member of the Waterkeeper Alliance, with 280 organizations in 34 countries around the world that promote fishable, swimmable, drinkable water. We have over 20,000 members in Whatcom, Skagit, and San Juan counties and submit these comments on their behalf.

**Scope of Water Quality Standards Rule Changes:**
RE Sources recognizes that the scope of comments is limited under this rulemaking to two specific areas of the WQS: (1) development and adoption of human health criteria, and (2) revision and expansion of some of the tools in the standards that help in criteria implementation. To reduce pollution and protect human health, the state water quality standards are a critical tool. The currently proposed update to Washington's water quality standards falls short of protecting Washington communities.

**Proposed Updates to Human Health Criteria**

**Fish Consumption Rates:**
While the rule changes that the Washington Department of Ecology (Ecology) has proposed take several steps in the right direction, such as switching the daily assumed fish consumption rate from 6.5 grams per day to 175

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grams per day, it does not go far enough. The very agency proposing the rulemaking, Ecology, revealed in a 2012 study that some tribal members eat up to 797 grams of fish per day.[1] Additionally, many tribal members within the Washington state area have been shown in local surveys to eat no less than 250 grams per day of fish. The Clean Water Act demands that state and tribal waters should support safe consumption of fish and shellfish, and that the standards need to be set to enable residents to safely consume from local waters the amount of fish they would normally consume. Thus, under the Clean Water Act, equal protection is deserved for all people, including Tribal members, Asian-Pacific islanders, commercial and recreational fishermen, all of whom eat the most fish in our state. The currently proposed 175 grams of fish per day is still unprotective of populations that deserve to be protected.

Additionally, fish consumption advisory signs are not sufficient to protect our residents. Warning signs in our state have shown to be ineffective. Therefore, it is important that fish consumption rate standards are set to protect those who are most sensitive.

***The 175 grams per day fish consumption rate is a step in the right direction, but should be increased to be fully protective of our state's population. Ideally, this rate should be set to 797 grams per day to be protective of our most sensitive populations. At the very least, it should be set to 250 grams per day as this would be satisfactorily protective of our state population. This will be more protective of not only humans, but also marine life in the Salish Sea.***

**Cancer Risk Rates:**
In the State of Washington, the daily fish-consumption rate and the acceptable risk of cancer are key components that are a part of equations that determine how policy makers regulate discharges by industry and municipalities into our waterways. Setting a chemical contamination pollution level based on an anticipated human cancer rate is a risk management and policy decision. Fish consumption and acceptable cancer rates thus become a significant component of the mechanism that is used to regulate Salish Sea water quality.

In addition to economic justice issues for human individuals and cultural groups that consume higher than average amounts of Salish Sea fish, nonprotective criteria could pose health issues for marine life that is higher on the food chain. In the process of consumption of one marine species by another, chemical contaminants become bioconcentrated. Please keep the more protective 1 in 1 million human cancer risk rate as it is more protective of the marine environment than the previous one in a one hundred thousand risk level.

***The cancer risk rate of 1 in 1 million should be kept to be protective of our state's human health.***

**Water Quality Criteria:**

[1] Toxics Cleanup Program, Washington Department of Ecology. (2013). *Fish Consumption Rates Technical Support Document - Version 2.0* (Publication No. 12-09-058). Accessed from: https://fortress.wa.gov/ecy/publications/publications/1209058.pdf

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PCBs and mercury are already dangerously high in our waterways, so working towards better standards is important. The newly proposed legislation does not have strong enough standards concerning PCBs, mercury, and arsenic. In fact, the standards recommended by Ecology are weaker than what the EPA currently recommends. Among the many health effects, PCBs and mercury are known to cause cancer, neurological damage, and other serious health impacts. Additionally, PCBs and mercury are the cause of over 90 percent of the fish consumption advisories in Washington. These contaminants need to be taken seriously and strong standards are necessary.

All of these toxics bioaccumulate in the food chain in such a way that makes fish problematic for the public to consume. In some cases, fish in the Spokane River are edible under the specific amounts and frequencies recommended in Department of Health fish advisories. But depending on the age, species and river reach, many other types of fish are too toxic to eat. The standards for PCBs are still exceeded in some fish and statewide mercury advisory remains in place making their consumption extremely problematic for pregnant women, children and folks who for cultural and economic reasons consume far more than the recommended allowance. Currently, the EPA has put forward PCB standards that are more protective and more up to date. The more protective EPA guidelines should be followed to ensure public health and safety.

Additionally, the EPA standards for both arsenic and mercury should be adopted. While we recognize the difficulty in cleaning up these toxics, inaction is not a solution. Using the older National Toxics Rule criteria is not adequate and leaves the public vulnerable to higher levels of these pollutants over time.

***Our Washington Water Quality Standards need to move us forward towards greater protections, not to maintain a level comfortably close to the status quo. Our state standards need to be as protective, if not more protective, than the current EPA standards.***

**Criteria Implementation Tools**

**Compliance Schedules:**
Loopholes in the implementation process of the proposed legislation could lead to delays in water quality improvements. Instead of relying on dischargers to simply meet the new water quality standards “as soon as possible”, additional framework should be included to create a strict timeframe in which standards are met. Language instead should read “as soon as possible or within ten years” or otherwise provide encouragement for compliance sooner than ten years, but set a deadline to ensure our public is not unnecessarily exposed to contaminants longer than they have to be. Protection of our waterways are simply too important to be delayed any further.

**Variances:**
The increased availability and potential use of variances in the proposed rule is unacceptable. Ecology policy should be pushing dischargers to lower their output of dangerous chemicals at the end of pipe, precisely because of the nature and amount of pollution in a water body can be excessive and challenging instead of

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allowing for variances simply for difficult circumstances. Ecology should not be providing off-ramps from meeting existing standards or providing the designated, attainable uses.

**Intake Credits:**
In regards to the implementation of intake credits we acknowledge that dischargers should not fully be held responsible for removing the pollutants already present in the water as it enters their site. However, we feel that it would be beneficial to establish an incentive program for dischargers to work to clean up Washington's waterways. A proactive incentive program would be of benefit to all and provide motivation to dischargers to engage in more than just the bare minimum.

**Conclusion:**
In conclusion, we believe that our State of Washington Water Quality Standards need to move us forward towards greater protections, not maintain a level comfortably close to the status quo. Water quality standards should protect us and other animals in Puget Sound, including apex predators. Given the strong economic and social ties the state of Washington has to its local waterbodies, it is imperative that water quality standards effectively protect safe and clean water for all.

Therefore, we ask that the state of Washington, do the following:

- ***Increase the proposed 175 grams per day fish consumption rate to at least 250 grams per day. Ideally it should be set to 797 grams per day in order to protect our sensitive populations, as is part of the water quality standard to be more protective of our state's population.***
- ***Retain the 1 in 1 million cancer risk rate.***
- ***Set water quality standards for PCBs, mercury, and arsenic to the stronger current EPA recommended criteria.***
- ***Set concrete timeframes for compliance schedules while encouraging faster compliances.***
- ***Push for dischargers to lower their outputs of dangerous chemicals rather than allowing for more variances.***
- ***Do not allow the implementation of intake credits and instead provided incentives for net decreases in pollutants.***

These comments are made with the idea that we should be working towards the ultimate elimination of discharge to the nation's waters. Ecology's proposed rulemaking should help us get there. Please do not provide provisions that stall our progress, or avoid the tough work of getting our public waters fishable and swimmable. Thanks for the opportunity to comment.

Sincerely,
Lee First, North Sound Baykeeper
Eleanor Hines, Lead Scientist
RE Sources Clean Water Program